

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:08CR65
	)	
Plaintiff,	)	
	)	
vs.	)	TENTATIVE FINDINGS
	)	
MICHAEL SHROPSHIRE,	)	
	)	
Defendant.	)	

The Court has received the Revised Presentence Investigation Report ("PSR"). No objections were filed as required; however objections appear in the Addendum, to the PSR. The government filed a detailed Statement. See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

According to the Addendum, the Defendant objects to the PSR. The objections are briefly discussed below.

**¶¶ 16, 22 - Drug Quantity**

The issue will be heard at sentencing. The burden is on the government by a preponderance of the evidence.

**¶ 25 - Lack of Minor Role Adjustment**

The objection will be heard at sentencing. The burden is on the Defendant by a preponderance of the evidence.

**¶ 102 - Grounds for Departure**

The objection is denied. Paragraph 102 states the probation officer's position regarding grounds for departure. The Defendant has not filed a motion for downward departure, and the deadline for a timely motion has passed. PSR, ¶ 6. Moreover, as stated in the Addendum, work history is a discouraged factor for a departure.

The Court advises counsel that it cannot adequately address objections which it has not read. This is the case in situations such as the instant case in which objections are not filed with the Court but rather were merely communicated to the probation officer. Counsel is advised to abide by the requirements of ¶ 6 of the Order on Sentencing Schedule and either file objections or a "Statement" indicating that, despite objections referred to in the Addendum, the party has no objections to the PSR.

**IT IS ORDERED:**

1. The Defendant's Objection to ¶ 102 of the PSR (Addendum) is denied;
2. The Defendant's objections to ¶¶ 16, 22, and 25 of the PSR (Addendum) will be heard at sentencing, unless the objections are waived;
3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final; and
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 2<sup>nd</sup> day of September, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge